Allied Workers Local 101 and Leonard Samuels and Walter Dickson and Northwestern Indiana **Building and Construction Trades Council and** Tonn and Blank, Inc.; Airo-Kool Cooling and Heating, Inc.; Allen's Construction Co., Inc.; Area Sheet Metal, Inc.; Continental Electric Co., Inc.; Wm. Hayden Contractor; Maris Roofing Co., Inc.; Mur's Electric Co.; Pyramid Mechanical Contractor, Inc.; Security Co., Inc.; Chester Dicksons d/b/a Dicksons Electric Co.: U.S. Dismantlement Corp.; and Mose Roberts d/b/a Roberts Wrecking Co. and Sheet Metal Workers International Association Local Union 303, AFL-CIO; Northwest Indiana and Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America, Local 1005, AFL-CIO; International Brotherhood of Electrical Workers Local Union No. 697, AFL-CIO; Bricklayers and Allied Craftsmen Union Local No. 6 of Indiana, AFL-CIO; United Union of Roofers Waterproofers and Allied Workers, Local Union No. 26, AFL-CIO; Local #433 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Union), AFL-CIO; Cement Masons Local Union No. 406 (O.P. & C.M.I.A.), AFL-CIO; Glaziers' Local Union No. 82 of the Brotherhood of Painters, Decorators and Paperhangers of America, Gary and Vicinity (AFL-CIO); Laborers' Local No. 81, Laborers' International Union of North America, AFL-CIO; and Painters Local Union No. 8, Brotherhood of Painters, Decorators and Paperhangers of America, Gary, Indiana, AFL-CIO. Case 13-CD-297

December 3, 1981

DECISION AND DETERMINATION OF DISPUTE

By Members Fanning, Jenkins, and Zimmerman

This is proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Northwestern Indiana Building and Construction Trades Council, herein called the Charging Party, alleging that Allied Workers Local 101 and Leonard Samuels and Walter Dickson, herein called the Allied Workers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with the object of forcing or requiring Tonn and Blank, Inc., the general contractor, and its subcontractors, Airo-Kool Cooling and Heating, Inc.; Allen's Construction Co., Inc.; Area Sheet Metal, Inc.; Continental Electric Co., Inc.; Wm. Hayden Contractor; Maris Roofing Co., Inc.; Mur's Electric Co.; Pyramid Mechanical Contractor, Inc.; Security Co., Inc.; Chester Dicksons d/b/a Dicksons Electric Co.; U.S. Dismantlement

Corp.; and Mose Roberts d/b/a Roberts Wrecking Co., herein collectively called the Employers, to assign certain work to employees represented by the Allied Workers rather than to employees represented by Sheet Metal Workers International Association Local Union 303, AFL-CIO; Northwest Indiana and Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America, Local 1005, AFL-CIO; International Brotherhood of Electrical Workers Local Union No. 697, AFL-CIO; Bricklayers and Allied Craftsmen Union Local No. 6 of Indiana, AFL-CIO: United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 26, AFL-CIO; Local #433 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Union), AFL-CIO; Cement Masons Local Union No. 406 (O.P. & C.M.I.A.), AFL-CIO; Glaziers' Local Union No. 82 of the Brotherhood of Painters, Decorators and Paperhangers of America, Gary and Vicinity (AFL-CIO); Laborers' Local No. 81, Laborers' International Union of North America, AFL-CIO; and Painters Local Union No. 8, Brotherhood of Painters, Decorators and Paperhangers of America, Gary, Indiana, AFL-CIO, herein collectively referred to as affiliates of the Charging Party.

Pursuant to notice a hearing was held before Hearing Officer Robert Perkovich on August 11 and 12, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employers and the Charging Party filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYERS

The parties stipulated, and we find, that the general contractor, an Indiana corporation, is engaged in the business of general construction. During the past 12 months, a representative period, the general contractor purchased materials from outside the State having a value in excess of \$50,000. Therefore, we find that the general contractor is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties further stipulated, and we find, that the subcontractors are employers

within the meaning of Section 2(2) of the Act. Accordingly, we find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Allied Workers and the Charging Party and its affiliates are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. The Work in Dispute

The parties stipulated, and we find, that the work in dispute involves all construction rehabilitation work, including but not limited to painting, drywall, bricklaying, roofing, plumbing, heating and ventilating, demolition, carpentry, fencing, concrete work, electrical, and general labor work, being performed on apartment buildings and apartments at the construction site known as the West Gary Redevelopment Project in Gary, Indiana.

B. Background and Facts of the Dispute

The general contractor began work at the jobsite in May 1981.1 Both the general contractor and its subcontractors assigned the work in dispute to employees who were represented by affiliates of the Charging Party. Cleven Allen, owner of Allen's Construction Co., Inc., one of the subcontractors, testified that on June 8 he was approached by the Allied Workers president, Leonard Samuels, and business agent, Walter Dickson. They asked Allen if he would hire some of their members. Allen stated that he had a contract with the Carpenters Union, an affiliate of the Charging Party, and that he knew nothing about the Allied Workers. Allen asked them what his obligations would be if he hired their members. Samuels and Dickson stated that he could pay them what the other subcontractors paid. William Hayden, the owner of Wm. Hayden Contractor, one of the subcontractors, testified that on June 9 he was likewise approached by Samuels and a couple of business agents for the Allied Workers. Samuels asked Hayden to hire some men, and Hayden replied that he did not need any. Immediately thereafter, pickets arrived at the jobsite with signs stating that "Tonn and Blank Was Unfair to Local 101 and the People of Gary." The pickets and that Hayden should hire members of the Allied Workers. The parties stipulated that the Allied Workers picketed the jobsite at least from June 20 through June 24. Witnesses at the hearing testified about further picketing by the Allied Workers on June 29 and 30 and on July 4.

On June 29 and 30, the Allied Workers picketed the jobsite and threatened to kill the general contractor's superintendent, John Monaco, and carpenter Paul Carpenter, respectively. Various witnesses also testified about alleged acts of violence and physical threats by the picketers. According to Benjamin Thomas, president of Airo-Kool, a subcontractor, he told Samuels at some point during the picketing that he would place members of the Allied Workers on the job if they were qualified and if they joined the appropriate union affiliate of the Charging Party. Samuels stated that he would send Thomas a list of qualified people but that it did not matter if they were members of the Allied Workers as long as they were black. Thomas never received such a list from Samuels. Finally, Bruce Meyer, the general contractor's project manager, stated that he informed Samuels on August 1 that the general contractor was not interested in participating in a training program with the Allied Workers because it had not been certified by the Labor Department. Samuels replied that he wanted his members employed on the job and that inasmuch as the hiring situation had not been settled there would be more demonstrations at the site the following week.

C. Contentions of the Parties

The Employers and the Charging Party and its affiliates contend that the work in dispute was properly assigned to employees represented by the Charging Party's affiliates on the basis of collective-bargaining agreements, the Employers' assignments and past practices, area practice, relative skills, and efficiency and economy of operation.

The Allied Workers maintains that it represents black employees who have traditionally been discriminated against in the construction industry in Gary, and that inasmuch as its members are qualified they should be assigned 51 percent of the disputed work.

D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

The record summarized above indicates that in June and July the president and business agents of the Allied Workers demanded that the general contractor and the subcontractors assign at least 50 percent of the disputed work to employees represented by the Allied Workers. The demands were

¹ All dates hereafter refer to 1981.

refused, and the Allied Workers picketed the project and engaged in threats in furtherance of the demands. The parties have stipulated that no method existed for voluntarily resolving the dispute.

Based on the foregoing, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there is no agreed-upon method for the voluntary adjustment of the work dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.² The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.³

The following factors are relevant in making the determination of the dispute before us:

1. Certification and collective-bargaining agreements

There is no evidence to show that the Allied Workers or any of the affiliates of the Charging Party have been certified by the Board as representatives of employees performing the work in dispute. The general contractor and its subcontractors, however, have collective-bargaining agreements with the respective affiliates of the Charging Party. Neither the general contractor nor any of its subcontractors have a collective-bargaining agreement with the Allied Workers. We therefore find that the relevant collective-bargaining agreements favor awarding the work to employees represented by the affiliates of the Charging Party.

2. The Employers' assignments and past practices

The general contractor and the subcontractors, in accordance with their preference, assigned the work in dispute to employees represented by affiliates of the Charging Party. Further, all of the representatives of the general contractor and the subcontractors who testified stated that their consistent practice has been to assign such work to affiliates of the Charging Party. Accordingly, we find that both the Employers' assignments and past

practices favor awarding the work to employees represented by the affiliates of the Charging Party.

3. Area practice

The evidence indicates that approximately 99.9 percent of the construction work in the Gary, Indiana, area is union work and that all of the union work is performed by affiliates of the Charging Party. Consequently, we find that the factor of area practice favors awarding the work in dispute to employees represented by the affiliates of the Charging Party.

4. Relative skills

The record discloses that the rehabilitation work being done at the project by the various trades requires greater skill than a regular construction job which begins from the ground up because of the selective replacement of materials and fixtures throughout the existing structures. Further, the project is a job issued by the Department of Housing and Urban Development and as such all apprentices on the job are required to be members of an apprenticeship program approved by the Department of Labor. Each of the local craft unions affiliated with the Charging Party has its own certified apprenticeship program in which the requisite skills to perform the disputed work are taught. Although the Laborers' Union does not send its members through an apprenticeship program, those involved in the demolition work were selected by the general contractor because of their skill and experience in that area. In contrast, there is no evidence to indicate that the Allied Workers members possess the skills necessary to perform all or any part of the work in dispute. The Allied Workers president testified that it has a training program for the construction trades but he was unable to describe the program and was unsure of its scope and reach. Further, any of the Allied Workers training programs which may exist are not certified. We find that this factor favors awarding the disputed work to employees represented by the affiliates of the Charging Party.

5. Efficiency and economy of operation

It appears from the record that employees represented by the affiliates of the Charging Party perform their work efficiently and that many of the subcontractors maintain permanent work crews which travel from job to job and work together for long periods of time. If any of the Employers are required to hire employees represented by the Allied Workers, they will have to lay off present employees. Accordingly, we find that the factors of efficiency and economy of operation also favor

² N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System], 364 U.S. 573 (1961).

³ International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company), 135 NLRB 1402 (1962).

awarding the work to employees represented by the Charging Party's affiliates.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by the affiliates of the Charging Party are entitled to perform the work in dispute. We reach this conclusion relying on the Employers' collective-bargaining agreements, the Employers' assignments and past practices, area practice, relative skills, and efficiency and economy of operation. In making this determination, we are awarding the work in question to employees who are represented by the affiliates of the Charging Party, but not to those Unions or to their members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Tonn and Blank, Inc,; Airo-Kool Cooling and Heating, Inc.; Allen's Construction Co., Inc.; Area Sheet Metal, Inc.; Continental Electrical Co., Inc.; Wm. Hayden Contractor; Maris Roofing Co., Inc.; Mur's Electric Co.; Pyramid Mechanical Contractor, Inc.; Security Co., Inc.; Chester Dicksons d/b/a Dicksons Electric Co.; U.S. Dismantlement Corp.; and Mose Roberts d/b/a Roberts Wrecking Co., who are represented by Sheet Metal Workers International Association Local Union 303, AFL-CIO; Northwest Indiana and Vicinity District Council of the United Brotherhood of Carpenters and Joiners of America, Local 1005, AFL-CIO; International Brotherhood of Electrical Workers Local Union No. 697, AFL-CIO; Bricklayers and Allied Craftsmen Union

Local No. 6 of Indiana, AFL-CIO; United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 26, AFL-CIO; Local #433 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Union), AFL-CIO; Cement Masons Local Union No. 406 (O.P. & C.M.I.A.), AFL-CIO; Glaziers' Local Union No. 82 of the Brotherhood of Painters, Decorators and Paperhangers of America, Gary and Vicinity (AFL-CIO); Laborers' Local Union No. 81, Laborers' International Union of North America. AFL-CIO; and Painters Local Union No. 8, Brotherhood of Painters, Decorators and Paperhangers of America, Gary, Indiana, AFL-CIO, are entitled to perform all construction rehabilitation work at the West Gary Redevelopment Project in Gary, Indiana.

- 2. Allied Workers Local 101 and Leonard Samuels and Walter Dickson are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Tonn and Blank, Inc.; Airo-Kool Cooling and Heating, Inc.; Allen's Construction Co., Inc.; Area Sheet Metal, Inc.; Continental Electric Co., Inc.; Wm. Hayden Contractor; Maris Roofing Co., Inc.; Mur's Electric Co.; Pyramid Mechanical Contractor, Inc.; Security Co., Inc.; Chester Dicksons d/b/a Dicksons Electric Co.; U.S. Dismantlement Corp.; and Mose Roberts d/b/a Roberts Wrecking Co., to assign the disputed work to employees represented by that labor organization.
- 3. Within 10 days from the date of this Decision and Determination of Dispute, Allied Workers Local 101 and Leonard Samuels and Walter Dickson shall notify the Regional Director for Region 13, in writing, whether or not it will refrain from forcing or requiring the Employers, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.